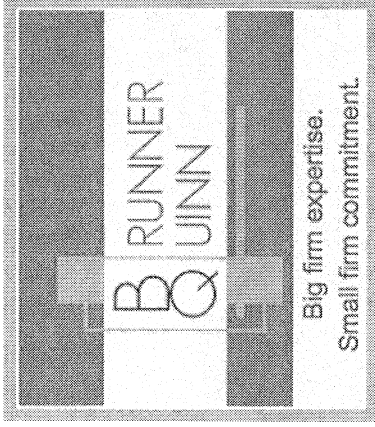


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October 27, 2012

Memorandum

TO: Ohio television station (as named in electronic mail address of cover email)
FROM: Jennifer Brunner, Brunner Quinn
RE: Demand to Refuse to Broadcast, Refrain from Broadcasting and Cease and Desist Broadcasting false and injurious 15-second campaign commercial, entitled, "Contrast: *Bill O'Neill can't be trusted to stand up for crime victims*"¹
(Paid for by the Ohio Republican Party)

This office and the sender represent retired Judge and Ohio Supreme Court candidate Bill O'Neill, who is also a practicing registered nurse. The purpose of this communication is to demand and require that your television station refuse to broadcast, refrain from broadcasting and, if airing, immediately cease and desist from airing, broadcasting, disseminating or in any way displaying the above referenced advertisement by the Ohio Republican Party. (See, *footnote 1, below for URL for YouTube publication of advertisement.*)

Retired Judge O'Neill has retained this firm for the purpose of pursuing any and all legal remedies arising from the airing and/or disseminating of the above-referenced campaign advertisement in question. This advertisement is false and defamatory in that it contains one or more statements that are false, including but not limited to, "**Bill O'Neill expressed sympathy for rapists.**" As noted in the attached letter from the Ohio State Bar Association Judicial Election Campaign Advertising Monitoring Committee, the statement in question is not supported by the facts:

The language in the ad comes from a ruling in which former Judge O'Neill wrote:

"Rape is a crime of violence which ultimately devastates the lives of at least two

people. It is beyond question that the victim suffers emotional damage. The perpetrator, on the other hand, is labeled for life as a rapist and left to lead a life of rejection and scorn by society as a whole. For these reasons, it is the duty of all courts to insure that justice is served for both parties.”

The committee’s reading of this indicates that then Judge O’Neill was performing his duties as a judge, expressing a commitment to preserving justice for all parties. *It also bears noting that this rape conviction was ultimately overturned unanimously by a three-judge panel.* In the committee’s estimation, use of the above-mentioned language in the ad is misleading, impugn the candidate’s integrity and erodes the public’s trust and confidence in the judiciary. (emphasis added)

The statement, “**Bill O’Neill expressed sympathy for rapists,**” was found by the Ohio State Bar Association Judicial Election Campaign Advertising Monitoring Committee to be based on an overturned rape conviction. This advertisement is patently false and defamatory. The statement, “**Bill O’Neill expressed sympathy for rapists,**” damages retired Judge O’Neill by placing him in an unfair and untruthful light such that his ability to earn a living as a practicing nurse is being irreparably damaged while this ad continues to air. We strongly urge that your television station not be a participant in this unfortunate, irresponsible and malicious² dissemination of false information about retired Judge O’Neill, a judicial candidate.

I note that retired Judge O’Neill’s opponent, who is allegedly benefitting from this advertisement, has called on the ad’s sponsor, the Ohio Republican Party, “to remove it from all forms of public distribution.” It is ironic that the sponsor of the ad is Judge O’Neill’s opponent’s own political party. To illustrate, as reported by Hannah News Service,

”Justice Cupp and his campaign disavowed and criticized the state party’s independent ad the moment we found out about it, and we call on the state party to remove it from all forms of public distribution,’ campaign spokesman Mark Weaver said in a statement.”

You are hereby on notice that if your television station has not refrained from broadcasting, has not refused to broadcast or has failed to cease and desist from broadcasting this advertisement or any derivative or iteration of it, especially containing the damaging statement, “**Bill O’Neill expressed sympathy for rapists,**” by 12:01 a.m. Monday October 29, 2012, your television station may be subject to appropriate legal remedies undertaken on behalf of our client, including but not limited to a court action for a monetary award to compensate him for damages to his ability to earn a living as a health care provider, that is, as a practicing nurse.

If you or legal counsel wish to contact our firm’s principals over the weekend please do so at rlb@brunnerlaw.com and/or pmq@brunnerlaw.com or ilb@brunnerlaw.com.

Attachments: Ohio State Bar Association letter
Hannah News Service article

² The statement(s) in the advertisement in question, “Bill O’Neill expressed sympathy for rapists,” has been made with the legal requisite for recovery of damages, “actual malice.”

CONTACT INFORMATION:

Maxine Thomas, chair
OSBA Judicial Election Campaign Advertising Monitoring Committee
937-439-9808



1700 Lake Shore Drive, Columbus, Ohio 43204

October 26, 2012

Robert Bennett
Ohio Republican Party
211 South Fifth Street
Columbus, Ohio 43215
info@ohiogop.org

Dear Mr. Bennett,

The Ohio State Bar Association Judicial Election Campaign Advertising Monitoring Committee met yesterday to consider a complaint regarding an advertisement supporting Justice Robert Cupp that was paid for by the Ohio Republican Party. As is the custom of our committee, we are notifying you of the committee's finding. We will also notify Justice Cupp, candidate O'Neill, and we will release this letter to the Ohio media.

The committee unanimously determined that statements in the ad, taken as a whole, violate committee standards in that they impugn the integrity of the judicial system, the integrity of a candidate for the Supreme Court of Ohio, and erode the public trust and confidence in the independence and impartiality of the judiciary by attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner.

The Committee was troubled by this specific language: "Bill O'Neill expressed sympathy for rapists." Use of this language could (1) lead people to believe that former Judge O'Neill might decide issues or cases in a predetermined manner; (2) question his integrity; and (3) erode the public's trust and confidence in the judicial system.

The language in the ad comes from a ruling in which former Judge O'Neill wrote:

"Rape is a crime of violence which ultimately devastates the lives of at least two people. It is beyond question that the victim suffers emotional damage. The perpetrator, on the other hand, is labeled for life as a rapist and left to lead a life of rejection and scorn by society as a whole. For these reasons, it is the duty of all courts to insure that justice is served for both parties."

The committee's reading of this indicates that then Judge O'Neill was performing his duties as a judge, expressing a commitment to preserving justice for all parties. It also bears noting that this rape conviction was ultimately overturned unanimously by a three-judge panel. In the committee's estimation, use of the above-mentioned language in the ad is misleading, impugns the candidate's integrity and erodes the public's trust and confidence in the judiciary.

To his credit, Justice Cupp issued a statement from his campaign committee renouncing the ad:

"Justice Cupp and his campaign found out about the state party ad shortly after the news media did. We are not aware that such an ad has actually been broadcast. However, Justice Cupp does not believe the purported ad is an appropriate approach to judicial campaigning, which is why he has not and would not approve a commercial like this."

The committee believes Justice Cupp needs to go further in his renunciation of the ad by requesting that the Ohio Republican Party cease its airing and use in any form.

Beyond a request from Justice Cupp, the OSBA Judicial Election Campaign Advertising Monitoring Committee now asks the Ohio Republican Party to take down this ad and cease its airing and use in any form.

The goal of the OSBA Judicial Election Campaign Advertising Monitoring Committee is to serve as the public's "watchdog," to see that advertising stays focused on judicial qualifications and does not deteriorate into name calling and negativism. We will continue to monitor advertising and campaign materials to help the public get the information they need to make informed voting decisions.

Sincerely,

Maxine Thomas, Chair
Ohio State Bar Association
Judicial Election Campaign Advertising Monitoring Committee

cc: Ohio State Bar Association Judicial Election Campaign Advertising Monitoring Committee
Justice Robert Cupp
William O'Neill



1700 Lake Shore Drive, Columbus, Ohio 43204

October 26, 2012

Justice Robert Cupp
c/o Amy Sabath
211 S. 5th Street
Columbus, OH 43215
bob@bobcupp.org

Dear Justice Cupp,

The Ohio State Bar Association Judicial Election Campaign Advertising Monitoring Committee met yesterday to consider a complaint regarding an advertisement supporting your candidacy that was paid for by the Ohio Republican Party. The committee unanimously determined that statements in the ad violate committee standards in that they impugn the integrity of the judicial system, the integrity of a candidate for the Supreme Court of Ohio, and erode the public trust and confidence in the independence and impartiality of the judiciary by attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner.

A letter was sent to the Ohio Republican Party regarding this matter, a copy of which is included with this correspondence.

The “OSBA clean campaign pledge” you signed states:

I agree, based upon my personal examination of judicial advertisements, to publicly disavow advertisements that impugn the integrity of the judicial system, the integrity of a candidate for the Supreme Court, or erode public trust and confidence in the independence and impartiality of the judiciary by verbally or visually attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner.

Therefore, the committee now calls on you to go beyond publicly disavowing this ad as per your agreement in the above pledge, and demand that the Ohio Republican Party remove this ad and cease its airing and use in any form.

The goal of the OSBA Judicial Election Campaign Advertising Monitoring Committee is to serve as the public’s “watchdog,” to see that advertising stays focused on judicial qualifications and does not deteriorate into name calling and negativism. We will continue to monitor advertising and campaign materials to help the public get the information they need to make informed voting decisions.

Sincerely,

Maxine Thomas, Chair
Ohio State Bar Association
Judicial Election Campaign Advertising Monitoring Committee

cc: Ohio State Bar Association Judicial Election Campaign Advertising Monitoring Committee
William O’Neill



Saturday, October 27, 2012

Bar Association Asks Ohio GOP, Cupp Take Down Controversial Advertisement

Justice Robert Cupp Friday quickly called for the Ohio Republican Party to take down an advertisement attacking his opponent, former appeals court Judge William O'Neill, after the Ohio State Bar Association (OSBA) sent letters to both Cupp and the state party saying it was troubled by language in the ad that said O'Neill "expressed sympathy for rapists."

The bar association asked Cupp to go beyond his previous disavowing of the ad and demand its removal, which led to the action by the Cupp campaign. OSBA sent the letters two days after the advertisement went on the air, and a day after the Ohio Democratic Party asked OSBA to have its Campaign Advertising Monitoring Committee convene, condemn the ad and lower Cupp's judicial rating if he does not ask for its removal.

Maxine Thomas, chair of the OSBA monitoring committee, sent the letters Friday saying that the committee "unanimously determined that the statements in the ad, taken as a whole, violate committee standards in that they impugn the integrity of the judicial system, the integrity of a candidate for the Supreme Court of Ohio, and erode the public trust and confidence in the independence and impartiality of the judiciary by attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner."

Thomas said the monitoring committee looked at the ruling that is the basis for the ad, O'Neill's 1994 opinion in the case of the *State of Ohio v. Brian M. Brant*, and said that the committee's reading of that ruling indicates that O'Neill was performing his duties as a judge and expressing a commitment to preserve justice for all parties.

In a separate letter to Cupp, Thomas noted to the incumbent justice that he had signed OSBA's clean campaign statement and called for him to go beyond publicly disavowing the ad and call for the Ohio GOP to stop airing the spot.

Shortly after the letters were sent, Cupp's campaign took the extra step requested by the OSBA.

"Justice Cupp and his campaign disavowed and criticized the state party's independent ad the moment we found out about it, and we call on the state party to remove it from all forms of public distribution," campaign spokesman Mark Weaver said in a statement.

A message seeking comment was left with a spokesman for the Ohio Republican Party.
Story originally published in *The Hannah Report* on October 26, 2012. Copyright 2012 Hannah News Service, Inc.

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